In the Claims

Please amend all prior versions, and listings of claims in the application with the following list of claims:

1. (Currently Amended) A method for separately determining the performance of a the upstream and downstream ~~portion~~ portions of a cable network, the method comprising:

> Transmitting a test packet from a tester onto a portion of the network to the Cable Modem Termination System;
>
> Receiving the packet at the ~~CMTS~~ Cable Modem Termination System;
>
> ~~The CMTS discarding packets with errors;~~
>
> ~~The CMTS~~ Returning packets from the Cable Modem Termination System that do not have errors to the tester;
>
> ~~Not discarding packets in the tester with errors~~ Bypassing the tester's error checking and passing packets in the tester with errors;
>
> Checking the packet for a test pattern;
>
> and Identifying the packet as a test packet

2. (Original) The method in claim 1 further comprising the step of determining the performance of the upstream portion of the network using all packets determined to be test packets including those that would have been discarded due to errors in the downstream.

3. (Original) The method in claim 2 where the performance test results is Block Error Rate.

4. (Original) The method in claim 2 where the performance test results is Lost Packets.

5. (Original) The method in claim 1 wherein the network is a cable network.

6. (Original) The method in claim 5 wherein the transmitting step transmits the signal in the upstream channel.

7. (Original) The method in claim 6 wherein the signal is returned in the forward channel of the cable network.

8. (Original) The method in claim 6 wherein the destination is the Cable Modem Termination System.

9. (Original) The method in claim 2 wherein the process to check for errors is Cyclic Redundancy Check (CRC).

10. (Original) The method of claim 1 wherein the method repeats.

11. (Original) The method in claim 1 where the test packet contains a pattern that repeats throughout the packet.

12. (Original) The method in claim 2 where the packets are determined to be test packets by identifying a portion of a repeating test pattern.

13. (Original) The method in claim 2 where errors in part of the packet are ignored if other portions of the packet contain the repeating test pattern.

14. (Original) The method in claim 2 where the packet size is counted to determine if the packet is the size of a test packet.

15. (Original) The method in claim 2 where all packets are not discarded if they contain errors.